

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

PUBLIC SERVICES – Prohibition and Excise Department – Request of Sri M. Shankaraiah, Prohibition & Excise Inspector for declaration of probation within the normal period in the cadre of Prohibition & Excise Inspector by invoking rule 16(h) of Andhra Pradesh State and Subordinate Services Rules, 1996 – Orders – Issued.

REVENUE (EXCISE-I) DEPARTMENT

G.O.Ms.No. 106

Dated:16.02.2013.

Read the following:-

1. G.O.Rt.No.1712, Revenue (Ex.I) Department, dt.30.9.2002.
2. Hon'ble APAT common orders dated 18th August, 2011 in OA No. 3800/2008 with VMA No. 642/2008; O.A.No.3807/08 with VMA No.644/08 and O.A. No.3801/08 with VMA No. 643/08.
3. Hon'ble APAT orders dated:23.04.2010 in O.A.No.1710/2008 filed by Sri R.Kishan, P&EI.
4. From the High Court of AP interim orders dated 07.02.2012 in WPMP No. 1349/12 in WP No. 1095/12.
5. From the Hon'ble High Court of AP common order dated 4th December, 2012 in WPMP No. 802,1349 and 1380 of 2012 in WP No. 653, 1095 and 1115 of 2012.

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ORDER:

Sri K.Shankaraiah, is a direct recruit Prohibition & Excise Inspector who had joined on 28.11.1996 against a substantive vacancy through the APPSC, under Group-II Services. As such, he was required to pass all the prescribed departmental tests within the period of probation commencing from 28.11.1996. The normal probation period of the respondent was upto 27.11.1999 (3 years) since under Rule 5 of the Andhra Pradesh Excise Service Rules, every direct recruit shall be on probation for a total period of 2 years on duty within a continuous period of 3 years. However, the respondent has passed the last departmental test held on 13.05.2000 i.e., beyond the period of his probation. The failure of the respondent to pass the prescribed departmental tests within the period of probation attracts the penal provision contained in rule 16 (h) of AP State and Subordinate service Rules 1996.

2. Hence Government, in the reference first read above, have extended the probation of the individual upto the date of passing the last departmental test i.e., 27.07.2000, and the individual was accordingly deemed to have commenced his probation in the category of Proh. & Excise Inspector w.e.f. 28.07.1998 in accordance with Rule 16 (h) of the State and Subordinate Service Rules, 1996.

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3. Sri M.Shankaraiah, Prohibition & Excise Inspector, had instituted an Application in O.A.No.3807/2008 on the file of the Hon'ble Tribunal to direct the respondents not to alter the initial date of regularization / Commencement of probation of the applicant from 28.11.1996 to 28.7.1998 on account of the delay in passing the Departmental Tests and to consequently declare that the applicant is entitled for the date of regularization and commencement of probation as 28.11.1996 and to give his consequent placement in the seniority list of Inspectors among the Direct recruits of 1996 batch as per APPSC ranking.

4. In the reference second read above, the Hon'ble Andhra Pradesh Administrative Tribunal, after hearing the arguments, disposed the OAs vide its common order dated 18th August, 2011 in O.A.No.3800/2008 with VMA No. 642/2008; O.A.No.3807/08 with VMA No.644/08 and O.A. No.3801/08 with VMA No. 643/08 has ordered the following:

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"x x x x Having regard to the submissions of the respective parties, these applications are also allowed in terms of the orders containing in O.A.No.1710/2008, dt.23.08.2010 which are implemented by the Government vide G.O.Ms.No.1253, dt.13.09.2010. The VMAs are dismissed."

5. In the reference third read above, the Hon'ble Andhra Pradesh Administrative Tribunal has passed the following orders dt.23.04.2010 in O.A.No.1710/2008 filed by R.Kishan, Prohibition & Excise Inspector:-

"x x x Having regard to the facts and circumstances obtaining in this case and for the foregoing reasons, the impugned G.O.Rt.No.2220, Revenue (Ex.I(2)) Department, dated:21.11.2003 is hereby set aside and there shall be a direction to the respondents to restore the date of commencement of probation of the applicant in the category of Prohibition and Excise Inspector w.e.f. 29.05.1997 and fix his seniority in terms of ranking assigned by the APPSC and accord all consequential benefits by duly relaxing Rule 16(h) of the General Rules."

6. In respect of Sri R.Kishan, the Government had observed that as per the instructions issued in Memo.No.40609/Ex.I(2)/2001-1, Revenue (Ex.I) Dept., dt.16.07.2001, he was retrospectively appointed as Prohibition & Excise Inspector w.e.f. 29.05.1997 since he was found to have secured more marks and was thus held to be more meritorious than the candidates selected by the APPSC for appointment as Prohibition & Excise Inspectors in Zone-VI against the vacancy reserved for STs, Sri R.Kishan was originally selected as Excise Sub-Inspector and pursuant to the orders of the Hon'ble Tribunal in O.A.No.1407/98, dt.16.05.2001 and the instructions of APPSC. He had passed the departmental tests by 26.07.2001. Since the orders of appointment were issued to him on 16.07.2001, ante-dating his appointment w.e.f. 29.05.1997, it was deemed appropriate by the hon'ble Tribunal that he ought not be penalized for not passing the Departmental tests within the deemed period of probation. Therefore, the Government have issued orders in G.O.Ms.No.1253, Rev.(Ex.I) Dept., dt.30.09.2010, keeping in view the orders of Hon'ble Andhra Pradesh Administrative Tribunal dated:23.04.2010 in O.A.No.1710 of 2008 and the specific circumstances of the case, i.e., ante-dating of Sri R.Kishan's appointment as Prohibition & Excise Inspector, duly relaxing rule 16 (h) of Andhra Pradesh State and Subordinate Services Rules, 1996 in favour of Sri R. Kishan by invoking the powers of relaxation conferred under Rule 31 of A.P. State & Subordinate Services Rules, 1996, in supersession of orders issued in G.O.Rt.No.2220, Revenue (Ex.I) Department, dated:21.11.2003.

7. In view of the above, Government have filed an appeal in W.P.No.1349/2012 before the Hon'ble High Court of Andhra Pradesh. In the reference fifth read above the Hon'ble High Court of A.P., in its common order, has directed the following:

"Keeping in view the statement made by the learned Government Pleader for Revenue (Services) that the issue involved in these cases is squarely covered by the decision in O.A.No.1710 of 2008, dated 23.4.2010, the Tribunal allowed the present O.A.Nos.3800, 3807 and 3801 of 2008 by a common order, dated 18.08.2012. That apart, the Tribunal has also placed reliance on the judgments of the Division Bench of this Court in Manjira Grameena Bank, Sangareddy, Medak District V.M.Ashok Kumar and others reported in 2002 suppl. (1) ALD 344 (DB) and M.Radha Krishna Murthy V. Government of AP and others reported in 2003 (1) ALD 132 (DB).

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In view of the above, the interim suspension of the impugned orders granted by this court is vacated."

8. The Government, after careful examination of the matter and keeping in view the orders of Hon'ble Andhra Pradesh Administrative Tribunal dated:18.08.2012 in O.A.No.3800 of 2008 and the specific circumstances of the case, have decided to relax rule 16 (h) of Andhra Pradesh State and Subordinate Services Rules, 1996 in favour of Smt.M.Shankaraiah, by invoking the powers of relaxation conferred under Rule 31 of A.P.State & Subordinate Services Rules, 1996 in supersession of orders issued in G.O.Rt.No.1712, Revenue (Ex.I) Department, dt.30.09.2002.

9. Accordingly, in supersession of orders issued in G.O.Rt.No.1712, Revenue (Ex.I) Department, dt.30.09.2002, Government hereby order to relax rule 16(h) of Andhra Pradesh State & Subordinate Services Rules, 1996 in favour of Sri M.Shankaraiah, Prohibition and Excise Inspector and to declare that he shall be deemed to have completed his probation within the normal period of probation in the cadre of Prohibition & Excise Inspector subject to outcome of the orders of the Hon'ble High Court of A.P.

10. The Commissioner of Prohibition and Excise, A.P., Hyderabad shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

ASUTOSH MISHRA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioner of Prohibition and Excise, A.P., Hyderabad
Sri M.Shankaraiah, Prohibition and Excise Inspector **through**
Commissioner of Prohibition & Excise, Hyderabad.

Copy to:

The Govt. Pleader for Revenue (Ser.), APAT, Hyderabad.
The P.S. to Prl.Secy. to C.M.
The P.S. to Min. for (Proh.& Excise).
The P.S. to Prl. Secy. to Govt. (Excise & CT)
SF/SCs.

//FORWARDED :: BY ORDER//

SECTION OFFICER